



LARRY J. SIEGEL

CRIMINOLOGY

eleventh edition



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Criminology, Eleventh Edition

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PART
ONE

Concepts of Crime, Law, and Criminology

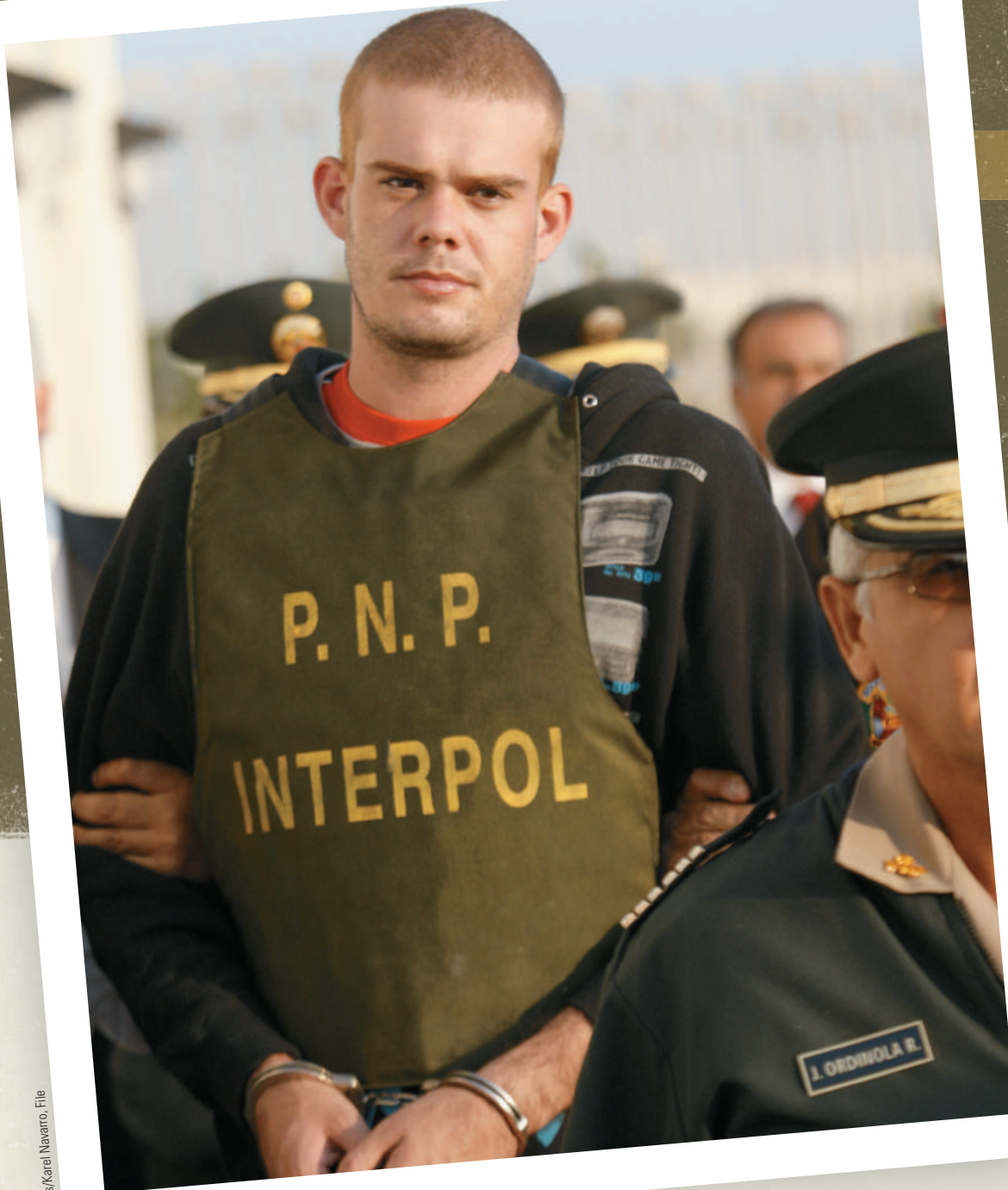
How is crime defined? How much crime is there, and what are the trends and patterns in the crime rate? How many people fall victim to crime, and who is likely to become a crime victim? How did our system of criminal law develop, and what are the basic elements of crimes? What is the science of criminology all about?

These are some of the core issues that will be addressed in the first three chapters of this text. Chapter 1 introduces students to the field of criminology: its nature, area of study, methodologies, and historical development. Concern about crime and justice has been an important part of the human condition for more than 5,000 years, since the first criminal codes were set down in the Middle East. Although criminology—the scientific study of crime—is considered a modern science, it has existed for more than 200 years. Chapter 1 introduces students to one of the key components of criminology—the development of criminal law. It also discusses the social history of law, the purpose of law, and how law defines crime. Chapter 2 focuses on the acquisition of crime data, crime rate trends, and observable patterns within the crime rate. Chapter 3 is devoted to victims and victimization. Topics include the effects of victimization, the cause of victimization, and efforts to help crime victims.

CHAPTER 1
Crime and Criminology

CHAPTER 2
The Nature and Extent of Crime

CHAPTER 3
Victims and Victimization



AP Images/Karel Navarro, File

NATALEE

Natalee Holloway, 18, from the Birmingham, Alabama, suburb of Mountain Brook, celebrated her high school graduation by going on a holiday to the Caribbean island of Aruba with about 100 classmates and several parent chaperones. On the night of May 30, 2005, she went to a local bar and was later seen leaving with three men—two brothers from Surinam and a local boy, the son of a high-ranking Dutch judicial official. Holloway never returned to her hotel nor did she appear in any security camera footage of the hotel lobby in the course of the night. When she did not show up for the flight home, her passport, luggage, and mobile phone were found in her hotel room.

The three suspects in the case, Joran van der Sloot and brothers Deepak Kalpoe and Satish Kalpoe, were arrested on June 9, 2005. However, the police could not come up with sufficient evidence to make the charges

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Crime and Criminology



Chapter Outline

What Is Criminology?

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Criminology and Deviance

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Whom to Study?

How to Study?

Learning Objectives

1. Understand what is meant by the “field of criminology”
2. Be familiar with the various elements of the criminological enterprise
3. Know the difference between crime and deviance
4. Discuss the three different views of crime
5. Know what constitutes the different categories of law
6. Discuss the different purposes of criminal law
7. Trace the development of criminal law
8. Describe the difference between a felony and a misdemeanor
9. Recognize the relationship between the criminal law and the U.S. Constitution
10. Be familiar with the ethical issues in criminology

stick, and the Kalpoes and Van der Sloot were released. Van der Sloot was required to stay within Dutch territory and he returned to the Netherlands to attend college.

The three young men had told the police that they took Holloway to Arashi Beach, on Aruba's northern tip, and at 2 A.M. dropped her off at her hotel, where they saw her being approached by a security guard as they drove off.¹ This was one of several stories circulating about the case, including claims that Holloway had been sold into sexual slavery and that she had died on the beach and her body was dumped at sea.

The case remains unsolved but not forgotten. In 2010, it was suddenly back on the front page: Van der Sloot approached Natalee Holloway's family in an effort to extort money from them in exchange for information on their daughter, including the location of her body. After being paid \$15,000 for information that turned out to be false, Van der Sloot used the cash to travel to Lima, Peru. There, on May 30, 2010, the fifth anniversary of Holloway's disappearance, a local girl, Stephany Tatiana Flores Ramírez, 21, was found dead in the Hotel TAC; the room had been registered in the name of Joran van der Sloot! Witnesses put the unfortunate young woman and Van der Sloot in the hotel together, and a video showed the two playing cards at the same table at a local casino. Ramírez's jewelry, ID, and credit cards were missing, as well as over \$10,000 she had won earlier that evening at the casino. Captured in Columbia, Van der Sloot was returned to Peru where he remains in a high-security Peruvian prison. He is said to have admitted killing Ramírez because she used his laptop without permission.

How can we explain the behavior of a Joran van der Sloot? What motivates a young man to become a multiple killer? Tall, handsome, educated, and wealthy, he hardly fits the profile of a cold-blooded murderer of young women. He was not a "product of his environment"; his crimes were not "gang related." Is it possible that his violent behavior was a function of some psychological abnormality or biological defect? Yet, those who knew him did not suspect he had a murderous side, nor did the police in Aruba describe him as mentally disturbed or deranged.

The questions about crime and its control raised by the Natalee Holloway/Joran van der Sloot case and other high-profile criminal incidents have spurred interest in **criminology**, an academic discipline that uses the scientific method to study the nature, extent, cause, and control of criminal behavior. Unlike political figures and media commentators—whose opinions about crime may be colored by personal experiences, biases, and election concerns—criminologists remain objective as they study crime and its consequences.²

Criminology is a multidisciplinary science. **Criminologists** hold degrees in a variety of diverse fields, most commonly sociology, but also **criminal justice**, political science, psychology, public policy, economics, and the natural sciences.

For most of the twentieth century, criminology's primary orientation was sociological, but today it can be viewed as an integrated approach to the study of criminal behavior.

How this field developed, its major components, and its relationship to crime law and deviance are some of the topics discussed in this chapter.

This text analyzes criminology and its major subareas of inquiry. It focuses on the nature and extent of crime, the causes of crime, and patterns of criminal behavior. This chapter introduces and defines criminology: What are its goals? How do criminologists define crime? How do they conduct research? What ethical issues face those wishing to conduct criminological research?

WHAT IS CRIMINOLOGY?

Criminology is the scientific approach to studying criminal behavior. In their classic definition, preeminent criminologists Edwin Sutherland and Donald Cressey state:

Criminology is the body of knowledge regarding crime as a social phenomenon. It includes within its scope the processes of making laws, of breaking laws, and of reacting toward the breaking of laws. . . . The objective of criminology is the development of a body of general and verified principles and of other types of knowledge regarding this process of law, crime, and treatment.³

Sutherland and Cressey's definition includes some of the most important areas of interest to criminologists:

- *Crime as a social phenomenon.* Although some criminologists believe that individual traits and characteristics may play some role in the cause of criminals' antisocial behavior, most believe that social factors are at the root cause of crime. Even the most disturbed people are influenced by their environment and their social interactions and personal relationships.
- *The processes of making laws.* Sutherland and Cressey's definition recognizes the association between crime and the criminal law and shows how the law defines crime. How and why laws are created and why some are strengthened and others eliminated is of great interest to criminologists.
- *Breaking laws and reacting toward the breaking of laws.* At its core, the purpose of criminology is to understand both the onset of crime and the most effective methods for its elimination. Why do people commit illegal acts, and what can be done to convince them—and others who are contemplating crime—that it is in their best interests to turn their back on criminality? These concepts are naturally bound together: it is impossible to effectively control crime unless we understand its cause.
- *Development of a body of general and verified principles.* Sutherland and Cressey recognize that criminology is a social science and criminologists must use the **scientific method** when conducting research. Criminologists are required to employ valid and reliable experimental designs and sophisticated data analysis techniques or else lose standing in the academic community.

Criminology and Criminal Justice

Although the terms *criminology* and *criminal justice* may seem similar, and people often confuse the two or lump them together, there are major differences between these fields of study. Criminology explains the etiology (origin), extent, and nature of crime in society, whereas criminal justice refers to the study of the agencies of social control—police, courts, and corrections. While criminologists are mainly concerned with identifying the suspected cause of *crime*, criminal justice scholars spend their time identifying effective methods of *crime control*.

Since both fields are crime-related, they do overlap. Some criminologists devote their research to **justice** and social control and are concerned with how the agencies of justice operate, how they influence crime and criminals, and how justice policies shape crime rates and trends. Conversely, criminal justice experts often want to design effective programs of crime prevention or rehabilitation and to do so must develop an understanding of the nature

of crime and its causation. It is common, therefore, for criminal justice programs to feature courses on criminology and for criminology courses to evaluate the agencies of justice.

Criminology and Deviance

Criminology is also related to the study of deviant behaviors—those actions that depart from social norms, values, and beliefs. Included within the broad spectrum of deviant acts are behaviors ranging from violent crimes to joining a nudist colony. However, significant distinctions can be made between these two areas of study because many crimes are not unusual or deviant, and many deviant acts are neither illegal nor criminal.

Take, for instance, substance abuse. Selling and/or possessing recreational drugs, such as marijuana, may be illegal, but can it actually be considered deviant? A significant percentage of the population have used or are using drugs; more than half of all high school students have tried drugs before they graduate.⁴ Therefore, it is erroneous to argue that all crimes are deviant behaviors that depart from the norms of society.

Similarly, many deviant acts are not criminal even though they may be both disturbing and shocking to the conscience. Suppose a passerby witnesses someone floundering in the ocean and makes no rescue attempt. Most people would condemn the onlooker's coldhearted behavior as callous, immoral, and deviant. However, no legal action could be taken since a private citizen is not required by law to risk his or her own life to save another's. There is no legal requirement that a person rush into a burning building, brave a flood, or jump into the ocean to save someone from harm. They may be deviant and not share commonly held values, but according to the law, they are not criminals.

In sum, criminologists are concerned with the concept of deviance and its relationship to criminality, whereas those sociologists who study deviant behaviors often want to understand and/or identify the line that separates criminal from merely unusual behaviors. The shifting definition of deviant behavior is closely associated with our concepts of crime. The relationships among criminology, criminal justice, and deviance are illustrated in Concept Summary 1.1.



The principal purpose of the **Office on National Drug Control Policy (ONDCP)** is to establish policies, priorities, and objectives for the nation's drug control program, the goals of which are to reduce illicit drug use, manufacturing, and trafficking; reduce drug-related crime and violence; and reduce drug-related health consequences. For more information about the United States' program for controlling drugs, visit the Criminal Justice CourseMate at cengagebrain.com, then access the "Web Links" for this chapter.

CONCEPT SUMMARY 1.1

Criminology: Criminal Justice and Deviance

Criminology

Criminology explores the etiology (origin), extent, and nature of crime in society. Criminologists are concerned with identifying the nature, extent, and cause of crime.

Criminal Justice

Criminal justice refers to the agencies of social control that handle criminal offenders. Criminal justice scholars engage in describing, analyzing, and explaining operations of the agencies of justice, specifically the police departments, courts, and correctional facilities. They seek more effective methods of crime control and offender rehabilitation.

Overlapping Areas of Concern

Criminal justice experts cannot begin to design effective programs of crime prevention or rehabilitation without understanding the nature and cause of crime. They require accurate criminal statistics and data to test the effectiveness of crime control and prevention programs.

Deviance

Deviance refers to the study of behavior that departs from social norms. Included within the broad spectrum of deviant acts are behaviors ranging from violent crimes to joining a nudist colony. Not all crimes are deviant or unusual acts, and not all deviant acts are illegal.

Overlapping Areas of Concern

Under what circumstances do deviant behaviors become crimes? When does sexually oriented material cross the line from merely suggestive to obscene and therefore illegal? If an illegal act becomes a norm, should society reevaluate its criminal status? There is still debate over the legalization and/or decriminalization of abortion, recreational drug use, possession of handguns, and assisted suicide.

WHAT CRIMINOLOGISTS DO: THE CRIMINOLOGICAL ENTERPRISE

Regardless of their theoretical orientation, criminologists are devoted to the study of crime and criminal behavior. As two noted criminologists, Marvin Wolfgang and Franco Ferracuti, put it: “A criminologist is one whose professional training, occupational role, and pecuniary reward are primarily concentrated on a scientific approach to, and study and analysis of, the phenomenon of crime and criminal behavior.”⁵

Because criminologists have been trained in diverse fields, several subareas reflecting different orientations and

perspectives are now contained within the broader arena of criminology. Taken together, these subareas make up the **criminological enterprise**. Criminologists may specialize in a subarea in the same way that psychologists might specialize in a subfield of psychology, such as cognition, development, perception, personality, psychopathology, or sexuality.

Criminal Statistics and Crime Measurement

The subarea of criminal statistics and crime measurement involves devising valid and reliable measures designed to calculate the amount and trends of criminal activity: How much crime occurs annually? Who commits it? When and where does it occur? Which crimes are the most serious? Criminologists:

- Formulate techniques for collecting and analyzing institutional (police, court, and correctional agency) records and data.
- Develop survey instruments to measure criminal activity not reported to the police by victims. These instruments can be used to estimate the percentage of people who commit crimes but escape detection by the justice system.
- Identify the victims of crime; create surveys designed to have victims report loss and injury that may not have been reported to the police.
- Develop data that can be used to test crime theory. For example, measuring community-level crime rates can help prove whether ecological factors, such as neighborhood poverty and unemployment rates, are related to crime rates.

Those criminologists who devote themselves to criminal statistics engage in a number of different tasks, including:

- Devising accurate methods of collecting crime data
- Using these tested methods to measure the amount and trends of criminal activity
- Using valid crime data to determine who commits crime and where it occurs
- Measuring the effect of social policy and social trends on crime rate changes
- Using crime data to design crime prevention programs and then measuring their effectiveness

The media love to sensationalize crime and report on lurid cases of murder and rape. The general public is influenced by these stories, becoming fearful and altering their behavior to avoid victimization.⁶ These news accounts, proclaiming crime waves, are often driven by the need to sell newspapers or increase TV viewership. There is nothing like an impending crime wave or serial killer on the loose to boost readership or viewership. Media accounts therefore can be biased and inaccurate, and it is up to criminologists to set the record straight. Criminologists try to create valid and reliable measurements of criminal behavior. They create techniques

to access the records of police and court agencies and use sophisticated statistical methods to understand underlying patterns and trends. They develop survey instruments and then use them with large samples to determine the actual number of crimes being committed and the number of victims who suffer criminal violations: how many people are victims of crime, and what percentage reports the crime to police.

Criminologists are also interested in helping agents of the criminal justice system develop effective crime control policies that rely on accurate measurement of crime rates. By using advanced statistical techniques to calculate where crime will take place, police departments can allocate patrol officers based on these predictions.⁷

The development of valid methods to measure crime and the accuracy of crime data are crucial aspects of the criminological enterprise. Without valid and reliable crime data sources, efforts to conduct research on crime and create criminological theories would be futile. It is also important to determine why crime rates vary across and within regions in order to gauge the association between social and economic forces and criminal activity.

About 10.5 million crimes were reported in 2009, a drop of more than 4 million reported crimes since the 1991 peak, and this despite a boost of about 50 million in the general population. Are the crime trends and patterns experienced in the United States unique or do they occur in other cultures as well? This issue is explored in the accompanying Race, Culture, Gender, and Criminology feature.

Sociology of Law, Law and Society, Socio-Legal Studies

The sociology of law, also referred to as the study of law and society, is a subarea of criminology concerned with the role social forces play in shaping criminal law and, concomitantly, the role of criminal law in shaping society. Criminologists interested in studying the social aspects of law focus on such topics as:

- The history of legal thought
- How social forces shape the definition and content of the law
- The impact of legal change on society
- The relationship between law and social control
- The effect of criminalization/legalization on behaviors

Some criminologists who study law and society consider the role of law in the context of criminological theory. They try to understand how legal decision making influences individuals, groups, and the criminal justice system. Others try to identify alternatives to traditional legal process—for example, by designing nonpunitive methods of dispute resolution. Some seek to describe the legal system and identify and explain patterns of behavior that guide its operation. Others use the operations of law as a perspective for understanding culture and social life.⁸

Because the law is constantly evolving, criminologists are often asked to determine whether legal change is required and what shape it should take. Criminologists may use their research skills to assess the effects of a proposed legal change. Take for instance the crime of obscenity. Typically, there is no uniform standard of what is considered obscene; material that to some people is lewd and offensive may be considered a work of art by others. How far should the law go in curbing “adult films” and literature? Criminologists might conduct research aimed at determining the effect the proposed law will have on curbing access to obscene material such as child pornography. Other relevant research issues might include analysis of the harmful effects of viewing pornography: Are people who view pornography more likely to commit violent crime than non-watchers? And what about the effect of virtual porn? Is viewing computer-generated sexual imagery the same as viewing live actors? The answers may one day shape the direction of legislation controlling sexual content on the Internet.

Computer fraud, file sharing, ATM theft, and cyberstalking did not exist when the nation was founded. Consequently, the law must be revised to reflect cultural, societal, and technological changes. In fact, the Supreme Court has often considered empirical research supplied by criminologists on such topics as racial discrimination in the death penalty before it renders an opinion.⁹ The research conducted by criminologists then helps shape the direction of their legal decision making. Might the research discussed in the accompanying Policy and Practice in Criminology box influence the shape of the criminal law and how it is applied?

Theory Construction and Testing

Social theory can be defined as a systematic set of interrelated statements or principles that explain some aspect of social life. At their core, theories should serve as models or frameworks for understanding human behavior and the forces that shape its content and direction.

Because, ideally, theories are based on verified *social facts*—readily observed phenomena that can be consistently quantified and measured—criminological theorists use the scientific method to test their theories. They gather data, derive *hypotheses*—testable expectations of behavior that can be derived from the theory—and then test them using valid empirical research methods. For example, social learning theory (see Chapter 7) states that people learn behavior through both observation and experience. If this statement is accurate, then logically there should be a significant association between observing domestic abuse, experiencing child abuse, and becoming an abuser. To test this theory, a number of hypotheses can be derived:

H1: People who are abused as children will grow up to become abusive parents.

H2: People who observe domestic abuse in their childhood will grow up to become abusers themselves.

Race, Culture, Gender, and Criminology

Crime in Other Cultures

Although the United States once led the Western world in overall crime, there has been a marked decline in U.S. crime rates, which are now below those of other industrial nations, including England and Wales, Denmark, and Finland.

Making international comparisons is often difficult because the legal definitions of crime vary from country to country. There are also differences in the way crime is measured. For example, in the United States, crime may be measured by counting criminal acts reported to the police or by using victim surveys, whereas in many European countries, the number of cases solved by the police is used as the measure of crime. Despite these problems, valid comparisons can still be made about crime across different countries using a number of reliable data sources. For example, the United Nations Survey of Crime Trends and Operations of Criminal Justice Systems (UNCJS) is one of the best-known sources of information on cross-national data. There is also the United Nations International Study on the Regulation of Firearms. INTERPOL, an international police agency, collects data from police agencies in 179 countries. The World Health Organization (WHO) has conducted surveys on global violence. The *European Sourcebook of Crime and Criminal Justice Statistics* provides data from police agencies in 36 European nations. Finally, the International Crime Victims Survey (ICVS) is

conducted in 60 countries and managed by the Ministry of Justice of the Netherlands, the Home Office of the United Kingdom, and the United Nations Interregional Crime and Justice Research Institute, and has become a reliable source of cross-cultural crime and victimization trends.

What do these data sources tell us about crime in other cultures? The ICVS is perhaps the best source today on determining crime and victimization rates and trends. According to the most recent ICVS, an estimated 16 percent of the population in the nations included in the survey have been a victim of at least one of ten common crimes (such as burglary, robbery, theft, assault) in the course of the last year. The countries with the highest scores are Ireland, England and Wales, New Zealand, and Iceland. Lowest overall victimization rates are found in Spain, Japan, Hungary, and Portugal. Similar to the United States, there has been a distinct downward trend in the level of crime and victimization during the past decade. Also, as in the U.S., some cities have much higher crime rates than others: the cities in developed countries with the lowest victimization rates are Hong Kong, Lisbon, Budapest, Athens, and Madrid; highest victimization rates are found in London and Tallinn, Estonia. The drops are most pronounced in property crimes such as vehicle-related crimes (bicycle theft, thefts from cars, and joyriding) and burglary. In most

countries, crime rates are back at the level of the late 1980s. One reason is that people around the world are taking precautions to prevent crime. Improved security may well have been one of the main forces behind the universal drop in crimes such as joyriding and household burglary.

What do the cross-national data tell us about individual crimes?

Homicide

Many nations, especially those experiencing social or economic upheaval, have murder rates much higher than the United States. Colombia has about 63 homicides per 100,000 people, and South Africa has 51, compared to fewer than 6 in the United States. During the 1990s, there were more homicides in Brazil than in the United States, Canada, Italy, Japan, Australia, Portugal, Britain, Austria, and Germany combined. Why are murder rates so high in Brazil? Law enforcement officials link the upsurge in violence to drug trafficking, gang feuds, vigilantism, and disputes over trivial matters, in which young, unmarried, uneducated males are involved.

Rape

Violence against women is related to economic hardship and the social status of women. Rates are high in poor nations in which women are oppressed. Where women are more emancipated, the rates of violence against women are lower.

H3: The more serious and prolonged the observed abuse, the more likely those abused will become abusive themselves.

H4: Child abuse and domestic abuse are intergenerational. Abusers are the offspring of abusers and become the parents of abusers.

To test this theory, criminologists might conduct a longitudinal study to determine if (a) people who abuse their spouses and children were abused themselves in childhood and (b) whether the parents of abusers were abused in childhood by their parents.

Sometimes criminologists use innovative methods to test theory. For example, to determine whether abuse is a learned behavior or a function of some biological abnormality, criminologists Tatia M. C. Lee, Siu-Ching Chan, and Adrian Raine used a magnetic resonance imaging (MRI) device to assess brain function of 10 male batterers and then compared the results with those attained from a similar sample of non-abusers. Brain scanning revealed that batterers showed significantly higher neural hyper-responsivity to the threat stimuli in a variety of regions of the brain. This means that when these hypersensitive men experience even mild provocations from their spouses they are hard-wired to

For many women, sexual violence starts in childhood and adolescence and may occur in the home, school, and community. Studies conducted in a wide variety of nations ranging from Cameroon to New Zealand found high rates of reported forced sexual initiation. In some nations, more than 40 percent of adolescent women and 20 percent of adolescent men report sexual coercion at the hands of family members, teachers, boyfriends, or strangers.

Sexual violence has significant health consequences, including suicide, stress, mental illnesses, unwanted pregnancies, sexually transmitted diseases, HIV/AIDS, self-inflicted injuries, and, in the case of child sexual abuse, adoption of high-risk behaviors such as multiple sexual partners and drug use.

Robbery

Countries with more reported robberies than the United States include England and Wales, Portugal, and Spain. Countries with fewer reported robberies include Germany, Italy, and France, as well as Middle Eastern and Asian nations.

Burglary

The United States has lower burglary rates than Australia, Denmark, Finland, England and Wales, and Canada. It has higher reported burglary rates than Spain, Korea, and Saudi Arabia.

Vehicle Theft

Australia, England and Wales, Denmark, Norway, Canada, France, and Italy now have higher rates of vehicle theft than the United States.

Child Abuse

A World Health Organization report found that child physical and sexual abuse takes a significant toll around the world. In a single year, about 57,000 children under 15 years of age are murdered. The homicide rates for children aged 0 to 4 years were over twice as high as rates among children aged 5 to 14 years. Many more children are subjected to nonfatal abuse and neglect; 8 percent of male and 25 percent of female children up to age 18 experience sexual abuse of some kind.

Gun Crimes

There has been a common assumption that the United States is the most heavily armed nation on earth, but there is new evidence that people around the world are arming themselves in record numbers. Residents in the 15 countries of the European Union have an estimated 84 million firearms. Of these, 67 million (80 percent) are in civilian hands. With a total population of 375 million people, this amounts to 17 guns for every 100 people.

CRITICAL THINKING

1. Although risk factors at all levels of social and personal life contribute to youth violence, young people in all nations who experience change in societal-level factors—such as economic inequalities, rapid social change, and the availability of firearms, alcohol, and drugs—seem the most likely to get involved in violence. Can anything be done to help alleviate these social problems?
2. The United States is notorious for employing much tougher penal measures than European nations. Do you believe our tougher measures would work abroad and should be adopted there as well? Is there a downside to putting lots of people in prison?

SOURCES: Jan van Dijk, John van Kesteren, and Paul Smit, "Criminal Victimization in International Perspective: Key Findings from the 2004–2005 ICVS and EU ICS, 2008," http://rechten.uvt.nl/icvs/pdf/ICVS2004_05.pdf (accessed October 29, 2010); Virendra Kumar and Sarita Kanth, "Bride Burning," *Lancet* 364 (2004): 18–19; Etienne Krug, Linda Dahlberg, James Mercy, Anthony Zwi, and Rafael Lozano, *World Report on Violence and Health*, (Geneva: World Health Organization, 2002); Graeme Newman, *Global Report on Crime and Justice*, (New York: Oxford University Press, 1999).

respond with violence. Rather than being a learned behavior, Lee and his associates conclude there is a neurobiological predisposition to spouse abuse in some men.¹⁰

Criminal Behavior Systems and Crime Typologies

Criminologists who study criminal behavior systems and crime typologies focus their research on specific criminal types and patterns: violent crime, theft crime, public order crime, and organized crime. Numerous attempts have been

made to describe and understand particular crime types. Marvin Wolfgang's famous 1958 study, *Patterns in Criminal Homicide*—considered a landmark analysis of the nature of homicide and the relationship between victim and offender—found that victims often precipitate the incident that results in their death.¹¹ Edwin Sutherland's analysis of business-related offenses helped coin a new phrase—white-collar crime—to describe economic crime activities.

Criminologists also conduct research on the links between different types of crime and criminals. This is known as a **crime typology**. Some typologies focus on the criminal, suggesting the existence of offender groups, such as

Policy and Practice in Criminology

Are Sex Offender Registration Laws Effective?

Criminologists interested in legal studies also evaluate the impact new laws have on society after they have been in effect for awhile. Take for instance the practice of sex offender registration, which requires convicted sex offenders to register with local law enforcement agencies when they move into a community. These are often called Megan's Laws in memory of 7-year-old Megan Kanka, killed in 1994 by sex offender Jesse Timmendequas, who had moved unannounced into her New Jersey neighborhood. Megan's Laws require law enforcement authorities to make information available to the public regarding registered sex offenders, including the offender's name, picture, address, incarceration date, and nature of crime. The information can be published in newspapers or put on a sex offender website.

In *Connecticut Dept. of Public Safety v. Doe* (2003), the U.S. Supreme Court upheld the legality of sex offender registration when it ruled that persons convicted of sexual offenses may be required to register with a state's Department of Public Safety and then be listed on a sex offender registry on the Internet containing registrants' names, addresses, photographs, and descriptions. In a 9–0 opinion upholding the plan, the Court reasoned that, because the law was based on the fact that a defendant had been convicted of a sex offense, disclosing their names on the registry without a hearing did not violate due process.

But while sex offender registration laws may be constitutional and pervasive (they are used in all 50 states), appeal to politicians who may be swayed by media crusades against child molesters (i.e., “To Catch

a Predator” on *Dateline NBC*), and appease the public's desire to “do something” about child predators, do they actually work? Does registration deter future sex offenses and reduce the incidence of predatory acts against children?

To answer this question, criminologists Kristen Zgoba and Karen Bachar recently (2009) conducted an in-depth study of the effectiveness of New Jersey's registration law and found that while expensive to maintain, the system did not produce effective results. On the one hand, sex offense rates in New Jersey were in a steep decline before the system was installed and the rate of decline actually slowed down after 1995 when the law took effect. Zgoba and Bachar's data show that the greatest rate of decline in sex offending occurred prior to the passage and implementation of Megan's Law. On the other hand, passage and implementation of Megan's Law did not reduce the number of rearrests for sex offenses, nor did it have any demonstrable effect on the time between when sex offenders were released from prison and the time they were rearrested for any new offense, such as a drug, theft, or another sex offense.

In another effort, Jill Levenson, Elizabeth Letourneau, Kevin Armstrong, and Kristen Zgoba investigated the relationship between failure to register (FTR) as a sex offender and subsequent recidivism with a sample of 3,000 people convicted of sexually related crimes. Levenson and her associates found that there was no significant difference in the proportion of sexual recidivists and nonrecidivists with registration violations nor did FTR predict sexual

recidivism. And when there was recidivism, there was no significant difference in time to recidivism when comparing those who failed to register (2.9 years) with compliant registrants (2.8 years).

These results challenge the effectiveness of sex offender registration laws. Rather than deter crime, sex offender laws may merely cause sex offenders to be more cautious while giving parents a false sense of security. For example, offenders may target victims in other states or communities where they are not registered and parents are less cautious.

CRITICAL THINKING

1. Considering the findings of Zgoba and Bachar, would you advocate abandoning sex offender registration laws because they are ineffective? Or might there be other reasons to keep them active?
2. What other laws do you think should be the topic of careful scientific inquiry to see if they actually work as advertised?

SOURCES: Jill Levenson, Elizabeth Letourneau, Kevin Armstrong, and Kristen Zgoba, “Failure to Register as a Sex Offender: Is It Associated with Recidivism?” *Justice Quarterly* 27 (2010): 305–331; Connecticut Dept. of Public Safety v. Doe, 538 U.S. 1 (2003); Kristen Zgoba and Karen Bachar, “Sex Offender Registration and Notification: Research Finds Limited Effects in New Jersey,” National Institute of Justice, April 2009, www.ncjrs.gov/pdffiles1/nij/225402.pdf (accessed October 29, 2010).

professional criminals, psychotic criminals, amateur criminals, and so on. Others focus on the crimes, clustering them into categories such as property crimes, sex crimes, and so on. While 50 years ago they might have focused their attention on rape, murder, and burglary, they now may be looking at stalking, cybercrime, terrorism, and hate crimes. For example, a number of criminologists are now doing research

on terrorism, trying to determine if there is such a thing as a “terrorist personality.” Among the findings:

- Mental illness is not a critical factor in explaining terrorist behavior. Also, most terrorists are not “psychopaths.”
- There is no “terrorist personality,” nor is there any accurate profile—psychologically or otherwise—of the terrorist.

- Histories of childhood abuse and trauma and themes of perceived injustice and humiliation often are prominent in terrorist biographies, but do not really help to explain terrorism.¹²

Research on criminal behavior systems and crime types is important because it enables criminologists to understand why people commit specific sorts of crime, and using this information, gives them the tools to devise crime reduction strategies.



According to the consensus view, crimes are behaviors believed to be repugnant to all elements of society. Do you agree with the artist's implied sentiment that spraying graffiti on a wall is not really a crime? Why do you think this remains an outlawed behavior?

Punishment, Penology, and Social Control

Criminologists also are involved in creating effective crime policies, developing methods of social control, and the correction and control of known criminal offenders; it is this segment of criminology that overlaps criminal justice. Criminologists conduct research that is designed to evaluate justice initiatives in order to determine their efficiency, effectiveness, and impact. For example, should capital punishment continue to be employed or is its use simply too risky? To explore this issue, Samuel Gross and his colleagues looked at death row inmates who were later found to be innocent. The sample of 340 death row inmates (327 men and 13 women), exonerated after having served years in prison, indicated that about half (144 people) were cleared by DNA evidence. Collectively, they had spent more than 3,400 years in prison for crimes they did not commit—an average of more than 10 years each. Gross and his colleagues found that exonerations from death row are more than 25 times more frequent than exonerations for other prisoners convicted of murder, and more than 100 times more frequent than for all imprisoned felons.¹³ How many wrongful convictions might be uncovered if all criminal convictions were given the same degree of scrutiny as death penalty cases? The Gross research illustrates how important it is to evaluate penal measures in order to determine their effectiveness and reliability.

Victimology: Victims and Victimization

In two classic criminological studies, one by Hans von Hentig and the other by Stephen Schafer, the critical role of the victim in the criminal process was first identified. These authors were the first to suggest that victim behavior is often a key determinant of crime and that victims' actions may actually precipitate crime. Both men believe that the study

of crime is not complete unless the victim's role is considered.¹⁴ For those studying the role of the victim in crime, these areas are of particular interest:

- Using victim surveys to measure the nature and extent of criminal behavior not reported to the police
- Calculating the actual costs of crime to victims
- Measuring the factors that increase the likelihood of becoming a crime victim
- Studying the role of the victim in causing or precipitating crime
- Designing services for the victims of crime, such as counseling and compensation programs

The study of victims and victimization has uncovered some startling results. For one thing, criminals have been found to be at greater risk for victimization than noncriminals.¹⁵ Rather than being the passive receptors of criminal acts who are in the “wrong place at the wrong time,” crime victims may engage in high-risk lifestyles that increase their own chance of victimization and make them highly vulnerable to crime.

The various elements of the criminological enterprise are summarized in Concept Summary 1.2.

CONNECTIONS

In recent years, criminologists have devoted ever-increasing attention to the victim's role in the criminal process. It has been suggested that a person's lifestyle and behavior may actually increase the risk that he or she will become a crime victim. Some have suggested that living in a high-crime neighborhood increases risk; others point at the problems caused by associating with dangerous peers and companions. For a discussion of victimization risk, see Chapter 3.

CONCEPT SUMMARY 1.2

The Criminological Enterprise

These subareas constitute the discipline of criminology:

Criminal Statistics and Research Methodology

Gathering valid crime data. Devising new research methods; measuring crime patterns and trends.

The Sociology of Law/Law and Society

Determining the origin of law. Measuring the forces that can change laws and society.

Theory Construction and Testing

Predicting individual behavior. Understanding the cause of crime rates and trends.

Criminal Behavior Systems and Crime Typologies

Determining the nature and cause of specific crime patterns. Studying violence, theft, organized, white-collar, and public order crimes.

Penology and Social Control

Studying the correction and control of criminal behavior. Using scientific methods to assess the effectiveness of crime control and offender treatment programs.

Victimology/Victims and Victimization

Studying the nature and cause of victimization. Aiding crime victims; understanding the nature and extent of victimization; developing theories of victimization risk.

HOW CRIMINOLOGISTS VIEW CRIME

Professional criminologists usually align themselves with one of several schools of thought or perspectives in their field. Each perspective maintains its own view of what constitutes criminal behavior and what causes people to engage in criminality. This diversity of thought is not unique to criminology; biologists, psychologists, sociologists, historians, economists, and natural scientists disagree among themselves about critical issues in their fields. Considering the multidisciplinary nature of the field of criminology, fundamental issues such as the nature and definition of crime itself are cause for disagreement among criminologists.

A criminologist's choice of orientation or perspective depends, in part, on his or her definition of crime. This section discusses the three most common concepts of crime used by criminologists.

The Consensus View of Crime

According to the **consensus view**, crimes are behaviors believed to be repugnant to all elements of society. The

substantive criminal law, which is the written code that defines crimes and their punishments, reflects the values, beliefs, and opinions of society's mainstream. The term *consensus* is used because it implies that there is general agreement among a majority of citizens on what behaviors should be outlawed by the criminal law and henceforth viewed as crimes. As the eminent criminologists Edwin Sutherland and Donald Cressey put it:

Criminal behavior is behavior in violation of the criminal law. . . . [I]t is not a crime unless it is prohibited by the criminal law [which] is defined conventionally as a body of specific rules regarding human conduct which have been promulgated by political authority, which apply uniformly to all members of the classes to which the rules refer, and which are enforced by punishment administered by the state.¹⁶

This approach to crime implies that it is a function of the beliefs, morality, and rules established by the existing legal power structure. According to Sutherland and Cressey's statement, criminal law is applied "uniformly to all members of the classes to which the rules refer." This statement reveals the authors' faith in the concept of an "ideal legal system" that deals adequately with all classes and types of people. Laws prohibiting theft and violence may be directed at the neediest members of society, whereas laws that sanction economic acts such as insider trading, embezzlement, and corporate price-fixing are aimed at controlling the wealthiest. The reach of the criminal law is not restricted to any single element of society.

Social Harm The consensus view of crime links illegal behavior to the concept of **social harm**. Though people generally enjoy a great deal of latitude in their behavior, it is agreed that behaviors that are harmful to other people and society in general must be controlled. Social harm is what sets strange, unusual, or **deviant behavior**—or any other action that departs from social norms—apart from criminal behaviors.¹⁷

CONNECTIONS

The associations among crime, social harm, and morality are best illustrated in efforts to criminalize acts considered dangerous to the public welfare because they involve behaviors that offend existing social values. These so-called public order crimes include pornography, prostitution, and drug use. Though "victims" are often willing participants, some people believe it is society's duty to save them from themselves. To read more about crime, morality, and social harm, see Chapter 14.

This position is not without controversy. Although it is clear that rape, robbery, and murder are inherently harmful and their control justified, behaviors such as drug use and prostitution are more problematic because the harm they inflict is only on those who are willing participants. According

to the consensus view, society is justified in controlling these so-called victimless crimes because public opinion holds that they undermine the social fabric and threaten the general well-being of society. Society has a duty to protect all its members—even those who choose to engage in high-risk behaviors. But are victims always people and how far should we go to protect non-humans? That is the topic addressed in the Thinking like a Criminologist feature.

The Conflict View of Crime

The **conflict view** depicts society as a collection of diverse groups—business owners, workers, professionals, students—who are in constant and continuing conflict. Groups able to assert their political power use the law and the criminal justice system to advance their economic and social position. Criminal laws, therefore, are viewed as acts created to protect the haves from the have-nots. Critical criminologists often compare and contrast the harsh penalties exacted on the poor for their “street crimes” (burglary, robbery, and larceny) with the minor penalties the wealthy receive for their white-collar crimes (securities violations and other illegal business practices), though the latter may cause considerably more social harm. While the poor go to prison for minor law violations, the wealthy are given lenient sentences for even the most serious breaches of law. Rather than being class neutral, criminal law reflects and protects established economic, racial, gendered, and political power and privilege.

Crime, according to this definition, is a political concept designed to protect the power and position of the upper classes at the expense of the poor. Even crimes prohibiting violent acts, such as armed robbery, rape, and murder, may have political undertones. Banning violent acts ensures domestic tranquility and guarantees that the anger of the poor and disenfranchised classes will not be directed at their wealthy capitalist exploiters. According to this conflict view of crime, “real” crimes would include the following acts:

- Violations of human rights due to racism, sexism, and imperialism
- Unsafe working conditions
- Inadequate child care
- Inadequate opportunities for employment and education
- Substandard housing and medical care
- Crimes of economic and political domination
- Pollution of the environment
- Price-fixing
- Police brutality
- Assassinations and war-making
- Violations of human dignity
- Denial of physical needs and necessities, and impediments to self-determination
- Deprivation of adequate food
- Blocked opportunities to participate in political decision making

THINKING LIKE A CRIMINOLOGIST > An Ethical Dilemma

Cody Watson

On January 10, 2011, Cody Watson, the star quarterback of the Los Angeles Hawks pleaded guilty to charges of criminal conspiracy stemming from his involvement in a dog-fighting ring. Watson had been accused of torturing and executing dogs who lost their matches at his arena. While dog lovers demand that Watson receive the harshest punishment possible, others complain that harsh treatment is uncalled for and unfair. During the sentencing hearing, Watson’s lawyer observed that people eat steaks and cheeseburgers all the time. “Isn’t it a bit hypocritical to consume the flesh of dead animals, killed for our pleasure, and condemn the behavior of someone accused of killing animals for another purpose?” The attorney went on to note, “Many people are hunters who routinely shoot and kill moose and deer. Why is it legal to hunt and kill defenseless animals if we are so concerned about animal welfare?” He then pointed out such unsavory and brutal activities as fox hunting, raising minks and chinchillas for fur coats, bull fighting, and boiling lobsters alive, all of which are perfectly legal. He addressed the



court with this summation, “Why were these practices, which involve the killing of innocent creatures, legal while dog fighting is condemned and its practitioners imprisoned? While some have argued that it is the method of killing that counts, I am not sure that the victims would agree.” Despite his plea, Cody Watson was sentenced to 23 months in prison and suspended from his team.

» **The commissioner of the NFL has asked your research team to advise him on whether Vick should be reinstated to the NFL after he completes his sentence. To provide an unbiased account, divide your team into two groups, and have each one make a presentation to the commissioner on Watson’s case, one supporting his reinstatement, the other opposed. Address such issues as whether his actions really cause social harm? Is what he did worse than the euthanizing of abandoned dogs because no one stepped forward in time for their adoption?**

The Interactionist View of Crime

The **interactionist view** of crime traces its antecedents to the symbolic interaction school of sociology, first popularized by pioneering sociologists George Herbert Mead, Charles Horton Cooley, and W. I. Thomas.¹⁸ This position holds that (a) people act according to their own interpretations of reality, through which they assign meaning to things; (b) they observe the way others react, either positively or negatively; and (c) they reevaluate and interpret their own behavior according to the meaning and symbols they have learned from others.

According to this perspective, there is no objective reality. People, institutions, and events are viewed subjectively and labeled either good or evil according to the interpretation of the evaluator. Some people might consider the hit film *Borat: Cultural Learnings of America for Make Benefit Glorious Nation of Kazakhstan* as obscene, degrading, and offensive, while others view the same film as a laugh riot. The same interactions help define crime:

- The content of the criminal law and consequently the definition of crime often depend on human interaction and perceptions. Alcohol is legal, marijuana is not. It could easily be the other way around. Gay marriage is legal in some jurisdictions, illegal in others.
- Deciding whether an individual act is considered a crime is also a function of interaction and labeling. When an argument results in the death of one of the participants, a jury may be asked to decide whether the act was murder, self-defense, or merely an accidental fatality. Each person on the jury may have his or her own interpretation of what took place, and whether the act is labeled a crime and the actor a criminal depends on the juror's interpretation of events.

The process in which people are defined or labeled as criminal is also subjective. One person is viewed as an unrepentant hard-core offender and sent to a maximum security prison. Another, who has committed essentially the same crime, is considered remorseful and repentant and given probation in the community. Though their acts are similar, the treatment they receive is quite different. In a classic statement, sociologist Howard Becker argued, "The deviant is one to whom that label has successfully been applied; deviant behavior is behavior people so labeled."¹⁹ According to the interactionist view, the definition of crime reflects the preferences and opinions of people who hold social power in a particular legal jurisdiction. These **moral entrepreneurs** wage campaigns (*moral crusades*) to control behaviors they view as immoral and wrong (e.g., abortion) or, conversely, to legalize behaviors they consider harmless social eccentricities (e.g., carrying a handgun for self-protection; smoking pot). Because drug use offends their moral sense, it is currently illegal to purchase marijuana and hashish, while liquor and cigarettes are sold openly, even though far more people die of alcoholism and smoking than from drug abuse each year.²⁰ Even the definition of serious violent offenses, such as rape and murder, depends on the prevailing moral values of those who shape the content of the

criminal law. For example, Florida has implemented a "stand your ground law" that legalizes the killing of an unarmed thief or intruder if the person is found in the owner's parked car; in other states, shooting an unarmed person merely because he or she was sitting in your car might be considered murder. Fifty years ago, a man could not be prosecuted for raping his wife; today, every state criminalizes marital rape. In sum, the definition of crime is more reflective of prevailing moral values than of any objective standard of right and wrong.

The interactionist view of crime is similar to the conflict perspective; both suggest that behavior is outlawed and considered criminal when it offends people who hold social, economic, and political power. However, unlike the conflict view, the interactionist perspective does not attribute capitalist economic and political motives to the process of defining crime. Laws against pornography, prostitution, and drugs are believed to be motivated more by moral crusades than by economic values.

The three main views of crime are summarized in Concept Summary 1.3.

Defining Crime

It is possible to take elements from each school of thought to formulate an integrated definition of crime, such as this one:

Crime is a violation of societal rules of behavior as interpreted and expressed by a criminal legal code

CONCEPT SUMMARY 1.3

The Definition of Crime

The definition of crime affects how criminologists view the cause and control of illegal behavior and shapes their research orientation.

Conflict View

- The law is a tool of the ruling class.
- Crime is a politically defined concept.
- "Real crimes" are not outlawed.
- The law is used to control the underclass.

Consensus View

- The law defines crime.
- The law reflects public opinion.
- Agreement exists on outlawed behavior.
- Laws apply to all citizens equally.

Interactionist View

- Moral entrepreneurs define crime.
- Crimes are illegal because society defines them that way.
- The definition of crime evolves according to the moral standards of those in power.

created by people holding social and political power. Individuals who violate these rules are subject to sanctions by state authority, social stigma, and loss of status.

This definition combines the consensus position that the criminal law defines crimes with the conflict perspective's emphasis on political power and control and the interactionist concept of labeling and stigma. Thus crime, as defined here, is a political, social, and economic function of modern life.

CRIME AND THE LAW

No matter which definition of crime we embrace, criminal behavior is tied to the law. It is therefore important for all criminologists to have some understanding of the development of law, its objectives, its elements, and how it has evolved.

A Brief History of the Law

The concept of criminal law has been recognized for more than 3,000 years. Hammurabi (1792–1750 BCE), the sixth king of Babylon, created the most famous set of written laws of the ancient world, known today as the Code of Hammurabi. Preserved on basalt rock columns, the code established a system of crime and punishment based on physical retaliation (“an eye for an eye”). The severity of punishment depended on class standing: if convicted of an unprovoked assault, a slave would be killed, whereas a freeman might lose a limb.

More familiar is the Mosaic Code of the Israelites (1200 BCE). According to tradition, God entered into a covenant or contract with the tribes of Israel in which they agreed to obey his law (the 613 laws of the Old Testament, including the Ten Commandments), as presented to them by Moses, in return for God's special care and protection. The Mosaic Code is not only the foundation of Judeo-Christian moral teachings but also a basis for the U.S. legal system. Prohibitions against murder, theft, and perjury preceded by several thousand years the same laws found in the modern United States.

Though ancient formal legal codes were lost during the Dark Ages, early German and Anglo-Saxon societies developed legal systems featuring monetary compensation for criminal violations. Guilt was determined by two methods. One was compurgation, in which the accused person swore an oath of innocence with the backing of 12 to 25 oath helpers, who would attest to his or her character and claims of innocence. The second was trial by ordeal, which was based on the principle that divine forces would not allow

an innocent person to be harmed. It involved such measures as having the accused place his or her hand in boiling water or hold a hot iron. If the wound healed, the person was found innocent; if the wound did not heal, the accused was deemed guilty. Another version, trial by combat, allowed the accused to challenge his accuser to a duel, with the outcome determining the legitimacy of the accusation. Punishments included public flogging, branding, beheading, and burning.

Common Law

After the Norman conquest of England in 1066, royal judges began to travel throughout the land, holding court in each shire several times a year. When court was in session, the royal administrator, or judge, would summon a number of citizens who would, on their oath, tell of the crimes and serious breaches of the peace that had occurred since the judge's last visit. The royal judge would then decide what to do in each case, using local custom and rules of conduct as his guide. Courts were bound to follow the law established in previous cases unless a higher authority, such as the king or the pope, overruled the law.

The present English system of law came into existence during the reign of Henry II (1154–1189), when royal judges began to publish their decisions in local cases. Judges began to use these written decisions as a basis for their decision making, and eventually a fixed body of legal rules and principles was established. If a new rule was successfully applied in a number of different cases, it would become a precedent. These precedents would then be commonly applied in all similar cases—hence the term **common law**. Crimes such as murder, burglary, arson, and rape are common-law crimes whose elements were initially defined by judges. They are referred to as *mala in se*, inherently evil and depraved. When the situation required it, the English Parliament enacted legislation to supplement the judge-made common law. These were referred to as statutory or *mala prohibita* crimes, which reflected existing social conditions. English common law evolved constantly to fit specific incidents that the judges encountered. For example, in the *Carriers* case (1473), an English court ruled that a merchant who had been hired to transport merchandise was guilty of larceny (theft) if he kept the goods for his own purposes.²¹ Before the *Carriers* case, it was not considered a crime under the common law when people kept something that was voluntarily placed in their possession, even if the rightful owner had only given them temporary custody of the merchandise. Breaking with legal tradition, the court acknowledged that the commercial system could not be maintained unless the laws of theft were expanded. The definition of larceny was altered in order to meet the needs of a growing free enterprise economic system. The definition of theft was changed to include the taking of goods not only by force or stealth but also by embezzlement and fraud.

The Law in Contemporary Society

In contemporary U.S. society, the law governs almost all phases of human enterprise, including commerce, family life, property transfer, and the regulation of interpersonal conflict. It contains elements that control personal relationships between individuals and public relationships between individuals and the government. The former is known as *civil law*, and the latter is called *criminal law*. The law then can generally be divided into four broad categories:

- **Substantive criminal law.** The branch of the law that defines crimes and their punishment is known as **substantive criminal law**. It involves such issues as the mental and physical elements of crime, crime categories, and criminal defenses.
- **Procedural criminal law.** Those laws that set out the basic rules of practice in the criminal justice system are **procedural criminal laws**. Some elements of the law of criminal procedure are the rules of evidence, the law of arrest, the law of search and seizure, questions of appeal, jury selection, and the right to counsel.
- **Civil law.** The set of rules governing relations between private parties, including both individuals and organizations (such as business enterprises or corporations), is known as **civil law**. The civil law is used to resolve, control, and shape such personal interactions as contracts, wills and trusts, property ownership, and commerce. Contained within the civil law is tort law discussed in Exhibit 1.1.
- **Public or administrative law.** The branch of law that deals with the government and its relationships with individuals or other governments is known as **public law**. It governs the administration and regulation of city, county, state, and federal government agencies.

The four categories of the law can be interrelated. A crime victim may file a tort action against a criminal defendant and

sue for damages in a civil court. Under tort law, a crime victim may sue even if the defendant is found not guilty because the evidentiary standard in a civil action is less than is needed for a criminal conviction (preponderance of the evidence versus beyond a reasonable doubt). In some instances, the government has the option to pursue a legal matter through the criminal process, file a tort action, or bring the matter before an administrative court. White-collar crimes often involve criminal, administrative, and civil penalties.

Shaping the Criminal Law

Before the American Revolution, the colonies, then under British rule, were subject to the common law. After the colonies won their independence, state legislatures standardized common-law crimes such as murder, burglary, arson, and rape by putting them into statutory form in criminal codes. As in England, whenever common law proved inadequate to deal with changing social and moral issues, the states and Congress supplemented it with legislative statutes. Similarly, statutes prohibiting such offenses as the sale and possession of narcotics or the pirating of DVDs have been passed to control human behavior unknown at the time the common law was formulated. Today, criminal behavior is defined primarily by statute. With few exceptions, crimes are removed, added, or modified by the legislature of a particular jurisdiction.

The content of the law may also be shaped by judicial decision making. A criminal statute may be no longer enforceable when an appellate judge rules that it is vague, deals with an act no longer of interest to the public, or is an unfair exercise of state control over an individual. Conversely, a judicial ruling may expand the scope of an existing criminal law, thereby allowing control over behaviors that heretofore were beyond its reach. In a famous 1990 case, 2 Live Crew (made up of Luther Campbell, Christopher Wong Won, Mark Ross, and David Hobbs), a prominent rap group, found its sales restricted in Florida as police began arresting children under 18 for purchasing the band's sexually explicit CD *As Nasty as They Want to Be*. The hit single "Me So Horny" was banned from local radio stations. Prosecutors tried but failed to get a conviction after group members were arrested at a concert. If members of the Crew had in fact been found guilty and the conviction had been upheld by the state's highest appellate court, obscenity laws would have been expanded to cover people singing (or rapping) objectionable music lyrics.

Constitutional Limits Regardless of its source, all criminal law in the United States must conform to the rules and dictates of the U.S. Constitution.²² Any criminal law that even appears to conflict with the various provisions and articles of the Constitution must reflect a compelling need to protect public safety or morals.²³

Criminal laws have been interpreted as violating constitutional principles if they are too vague or too broad to give clear meaning of their intent. A law forbidding adults to engage

EXHIBIT 1.1

Types of Torts

1. **Intentional torts** are injuries that the person knew or should have known would occur through his or her actions—e.g., a person attacks and injures another (assault and battery) after a dispute.
2. **Negligent torts** are injuries caused because a person's actions were unreasonably unsafe or careless—e.g., a traffic accident is caused by a reckless driver.
3. **Strict liability torts** are injuries that occur because a particular action causes damage prohibited by statute—e.g., a victim is injured because a manufacturer made a defective product.

in “immoral behavior” could not be enforced because it does not use clear and precise language or give adequate notice as to which conduct is forbidden.²⁴ The Constitution also prohibits laws that make a person’s status a crime. Becoming or being a heroin addict is not a crime, although laws can forbid the sale, possession, and manufacture of heroin.

The Constitution limits laws that are overly cruel and/or capricious. Whereas the use of the death penalty may be constitutionally approved, capital punishment would be forbidden if it were used for lesser crimes such as rape or employed

in a random, haphazard fashion.²⁵ Cruel ways of executing criminals that cause excessive pain are likewise forbidden. One method used to avoid “cruelty” is lethal injection. In the 2008 case *Baze and Bowling v. Rees*, the Court upheld the use of lethal injection unless there is a “substantial risk of serious harm” that the drugs will not work effectively.²⁶

One of the categories described in Exhibit 1.2 are so-called inchoate or incomplete crimes, such as attempt, solicitation, and conspiracy. The accompanying Profiles in Crime feature discusses the crime of conspiracy.

EXHIBIT 1.2

Definitions of Common-Law Crimes

Crime	Definition	Example
Crimes Against the Person		
<i>First-degree murder</i>	Unlawful killing of another human being with malice aforethought and with premeditation and deliberation.	A woman buys poison and pours it into a cup of coffee her husband is drinking, intending to kill him for the insurance benefits.
<i>Voluntary manslaughter</i>	Intentional killing committed under extenuating circumstances that mitigate the killing, such as killing in the heat of passion after being provoked.	A husband coming home early from work finds his wife in bed with another man. The husband goes into a rage and shoots and kills both lovers with a gun he keeps by his bedside.
<i>Battery</i>	Unlawful touching of another with intent to cause injury.	A man seeing a stranger sitting in his favorite seat in a cafeteria, goes up to that person and pushes him out of the seat.
<i>Assault</i>	Intentional placing of another in fear of receiving an immediate battery.	A student aims an unloaded gun at her professor and threatens to shoot. He believes the gun is loaded.
<i>Rape</i>	Unlawful sexual intercourse with a female without her consent.	After a party, a man offers to drive a female acquaintance home. He takes her to a wooded area and, despite her protests, forces her to have sexual relations with him.
<i>Robbery</i>	Wrongful taking and carrying away of personal property from a person by violence or intimidation.	A man armed with a loaded gun approaches another man on a deserted street and demands his wallet.
Inchoate (Incomplete) Offenses		
<i>Attempt</i>	An intentional act for the purpose of committing a crime that is more than mere preparation or planning of the crime. The crime is not completed, however.	A person places a bomb in the intended victim’s car so that it will detonate when the ignition key is used. The bomb is discovered before the car is started. Attempted murder has been committed.
<i>Conspiracy</i>	Voluntary agreement between two or more persons to achieve an unlawful object or to achieve a lawful object using means forbidden by law.	A doctor conspires with a con man to fake accidents and then bring the false “victims” to his office so he can collect medical fees from an insurance company.
<i>Solicitation</i>	With the intent that another person engage in conduct constituting a felony, a person solicits, requests, commands, or otherwise attempts to cause that person to engage in such conduct.	A terrorist approaches a person he believes is sympathetic to his cause and asks him to join in a plot to blow up a government building.
Crimes Against Property		
<i>Burglary</i>	Trespassory breaking and entering of a dwelling house of another in the nighttime with the intent to commit a felony.	Intending to steal some jewelry and silver, a young man breaks a window and enters another’s house at 10 P.M.
<i>Arson</i>	Intentional burning of a dwelling house of another.	A worker, angry that her boss did not give her a raise, goes to her boss’s house and sets it on fire.
<i>Larceny</i>	Taking and carrying away the personal property of another with the intent to keep and possess the property.	While shopping, a woman sees a diamond ring displayed at the jewelry counter. When no one is looking, the woman takes the ring, places it in her pocket, and walks out of the store without paying.

SOURCE: Developed by Therese J. Libby, J.D.

Profiles in Crime

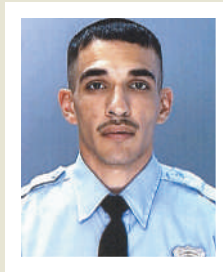
Conspiracy Does Not Pay



Robert Snyder



James Venziale



Mark Williams

On July 13, 2010, three Philadelphia police officers, Robert Snyder, Mark Williams, and James Venziale, were indicted for their involvement in a drug conspiracy. The scheme was put in play in April when Venziale met with reputed drug dealer Angel “Fat Boy” Ortiz near the North Philadelphia Amtrak station. Venziale and Ortiz discussed a plan to steal, with the illegal assistance of Philadelphia police officers, 300 grams of heroin from Miguel Santiago, their supplier. On

May 14, 2010, immediately after Santiago’s drug courier delivered 300 grams of heroin to Ortiz, Officers Williams and Venziale—who were on duty and in uniform—stopped Ortiz’s vehicle and seized the shipment. Williams and Venziale faked arresting Ortiz and handcuffed him outside his car, while Santiago’s men looked on in disgust. The fake arrest made it appear as if they were seizing the heroin, thereby protecting Ortiz from retaliation. The deal was facilitated by

a fourth conspirator, Christal Snyder, Robert Snyder’s wife, who passed information, via telephone or text message, between Ortiz and the police officers. In return for getting the 300 grams of heroin without payment to Santiago, Ortiz paid Williams and Venziale approximately \$6,000, and paid Christal Snyder an additional amount. Unfortunately for all those involved, Ortiz sold the stolen heroin to a drug dealer and money launderer who turned out to be a Drug Enforcement Administration (DEA) undercover agent. Conspiracies of this magnitude are not punished lightly, and the sentences the conspirators face range from 44 years (Robert Snyder) to 212 years (“Fat Boy” Ortiz) in prison.

SOURCE: Matt Flegenheimer and Robert Moran, “3 City Officers Charged in Heroin Scheme,” *Philadelphia Inquirer*, July 13, 2010, www.philly.com/philly/news/breaking/98344124.html (accessed October 30, 2010).

The Substantive Criminal Law

The substantive criminal law defines crime and punishment. Each state and the federal government has its own substantive criminal code, developed over many generations and incorporating moral beliefs, social values, and political, economic, and other societal concerns.

Criminal laws are divided into felonies and misdemeanors. The distinction is based on seriousness: a felony is a serious offense; a misdemeanor is a minor or petty crime. Crimes such as murder, rape, and burglary are felonies; they are punished with long prison sentences or even death. Crimes such as unarmed assault and battery, petty larceny, and disturbing the peace are misdemeanors; they are punished with a fine or a period of incarceration in a county jail.

Regardless of their classification, acts prohibited by the criminal law constitute behaviors considered unacceptable and impermissible by those in power. People who engage in these acts are eligible for severe sanctions. By outlawing these behaviors, the government expects to achieve a number of social goals:

- **Enforcing social control.** Those who hold political power rely on criminal law to formally prohibit behaviors

believed to threaten societal well-being or to challenge their authority. For example, U.S. criminal law incorporates centuries-old prohibitions against the following behaviors harmful to others: taking another person’s possessions, physically harming another person, damaging another person’s property, and cheating another person out of his or her possessions. Similarly, the law prohibits actions that challenge the legitimacy of the government, such as planning its overthrow, collaborating with its enemies, and so on.

- **Discouraging revenge.** By punishing people who infringe on the rights, property, and freedom of others, the law shifts the burden of revenge from the individual to the state. As Oliver Wendell Holmes stated, this prevents “the greater evil of private retribution.”²⁷ Although state retaliation may offend the sensibilities of many citizens, it is greatly preferable to a system in which people would have to seek justice for themselves.
- **Expressing public opinion and morality.** Criminal law reflects constantly changing public opinions and moral values. *Mala in se* crimes, such as murder and forcible rape, are almost universally prohibited; however, the prohibition of legislatively created *mala prohibita* crimes, such as traffic offenses and gambling violations,

changes according to social conditions and attitudes. Criminal law is used to codify these changes.

- **Detering criminal behavior.** Criminal law has a social control function. It can control, restrain, and direct human behavior through its sanctioning power. The threat of punishment associated with violating the law is designed to prevent crimes before they occur. During the Middle Ages, public executions drove this point home. Today criminal law's impact is felt through news accounts of long prison sentences and an occasional execution.
- **Punishing wrongdoing.** The deterrent power of criminal law is tied to the authority it gives the state to sanction or punish offenders. Those who violate criminal law are subject to physical coercion and punishment.
- **Maintaining social order.** All legal systems are designed to support and maintain the boundaries of the social system they serve. In medieval England, the law protected the feudal system by defining an orderly system of property transfer and ownership. Laws in some socialist nations protect the primacy of the state by strictly curtailing profiteering and individual enterprise. Our own capitalist system is also supported and sustained by criminal law. In a sense, the content of criminal law is more a reflection of the needs of those who control the existing economic and political system than a representation of some idealized moral code.
- **Providing restoration.** Victims deserve restitution or compensation for their pain and loss. The criminal law can be used to restore to victims what they have lost. Because we believe in equity and justice, it is only fair that the guilty help repair the harm they have caused others by their crimes. Punishments such as fines, forfeiture, and restitution are connected to this legal goal.

Some of the elements of the contemporary criminal law are discussed in The Criminological Enterprise feature “The Elements of Criminal Law.”

The Evolution of Criminal Law

The criminal law is constantly evolving in an effort to reflect social and economic conditions. Sometimes legal changes are prompted by highly publicized cases that generate fear and concern. A number of highly publicized cases of celebrity stalking, including Robert John Bardo's fatal shooting of actress Rebecca Schaeffer on July 18, 1989, prompted more than 25 states to enact **stalking statutes** that prohibit “the willful, malicious, and repeated following and harassing of another person.”²⁸ Similarly, after 7-year-old Megan Kanka of Hamilton Township, New Jersey, was killed in 1994 by a repeat sexual offender who had moved into her neighborhood, the federal government passed legislation requiring that the general public be notified of local pedophiles (sexual offenders who target children).²⁹ California's sexual predator law, which took effect on January 1, 1996, allows

people convicted of sexually violent crimes against two or more victims to be committed to a mental institution after their prison terms have been served.³⁰

The criminal law may also change because of shifts in culture and social conventions, reflecting a newfound tolerance of behavior condemned only a few years before. In an important 2003 case, *Lawrence v. Texas*, the Supreme Court declared that laws banning sodomy were unconstitutional because they violated the due process rights of citizens because of their sexual orientation. In its decision, the Court said:

Although the laws involved . . . here . . . do not more than prohibit a particular sexual act, their penalties and purposes have more far-reaching consequences, touching upon the most private human conduct, sexual behavior, and in the most private of places, the home. They seek to control a personal relationship that, whether or not entitled to formal recognition in the law, is within the liberty of persons to choose without being punished as criminals. The liberty protected by the Constitution allows homosexual persons the right to choose to enter upon relationships in the confines of their homes and their own private lives and still retain their dignity as free persons.

As a result of the decision, all sodomy laws in the United States are now unconstitutional and therefore unenforceable.³¹

What are some of the new laws that are being created and old ones that have been eliminated?

Stalking Laws More than 25 states have enacted stalking statutes, which prohibit and punish acts described typically as “the willful, malicious, and repeated following and harassing of another person.”³² Stalking laws were originally formulated to protect women terrorized by former husbands and boyfriends, although celebrities are often plagued by stalkers as well. In celebrity cases, these laws often apply to stalkers who are strangers or casual acquaintances of their victims.

Prohibiting Assisted Suicide Some laws are created when public opinion turns against a previously legal practice. Physician-assisted suicide became the subject of a national debate when Dr. Jack Kevorkian began practicing what he calls *obitriatry*, helping people take their own lives.³³ In an attempt to stop Kevorkian, Michigan passed a statutory ban on assisted suicide, reflecting what lawmakers believed to be prevailing public opinion.³⁴ Kevorkian was released on June 1, 2007, on parole due to good behavior and now gives lectures on college campuses. Forty-four states now disallow assisted suicide either by statute or common law, including Michigan.³⁵

Registering Sex Offenders Some legal changes have been prompted by public outrage over a particularly heinous crime. One of the most well known is Megan's Law, named after 7-year-old Megan Kanka of Hamilton Township,

The Criminological Enterprise

The Elements of Criminal Law

Although each state and the federal government have unique methods of defining crime, there are significant uniformities and similarities that shape the essence of almost all criminal law codes. Although the laws of California, Texas, and Maine may all be somewhat different, the underlying concepts that guide and shape their legal systems are universal. The question remains: regardless of jurisdictional boundaries, what is the legal definition of a crime and how does the criminal law deal with it?

Legal Definition of a Crime

Today, in all jurisdictions, the legal definition of a crime involves the elements of the criminal acts that must be proven in a court of law if the defendant is to be found guilty. For the most part, common criminal acts have both mental and physical elements, both of which must be present if the act is to be considered a legal crime. In order for a crime to occur, the state must show that the accused committed the guilty act, or *actus reus*, and had the *mens rea*, or criminal intent, to commit the act. The *actus reus* may be an aggressive act, such as taking someone's money, burning a building, or shooting someone; or it may be a failure to act when there is a legal duty to do so, such as a parent neglecting to seek medical attention for a sick child. The *mens rea* (guilty mind) refers to an individual's state of mind at the time of the act or, more specifically, the person's intent to commit the crime.

Actus Reus

To satisfy the requirements of *actus reus*, guilty actions must be voluntary. Even though an act may cause harm or damage, it is not considered a crime if it was done by accident or was an involuntary act. For example, it would not be a crime if a motorist obeying all the traffic laws hit a child who ran into the street. If the same motorist were drinking or speeding, then his action would be considered a vehicular crime because it was a product of negligence. Similarly, it would not be considered a crime if a babysitter accidentally dropped a child and the child died. However, it would be considered manslaughter if the sitter threw the child down in anger or frustration and the blow caused the child's death. In some circumstances of *actus reus*, the use of words is considered criminal. In the crime of sedition, the words of disloyalty constitute the *actus reus*. If a person falsely yells "fire" in a crowded theater and people are injured in the rush to exit, that person is held responsible for the injuries, because the use of the word in that situation constitutes an illegal act.

Typically, the law does not require people to aid others in distress, such as entering a burning building to rescue people trapped by a fire. However, failure to act is considered a crime in certain instances:

- *Relationship of the parties based on status.* Some people are bound by rela-

tionship to give aid. These relationships include parent/child and husband/wife. If a husband finds his wife unconscious because she took an overdose of sleeping pills, he is obligated to save her life by seeking medical aid. If he fails to do so and she dies, he can be held responsible for her death.

- *Imposition by statute.* Some states have passed laws requiring people to give aid. For example, a person who observes a broken-down automobile in the desert but fails to stop and help the other parties involved may be committing a crime.
- *Contractual relationships.* These relationships include lifeguard and swimmer, doctor and patient, and babysitter or au pair and child. Because lifeguards have been hired to ensure the safety of swimmers, they have a legal duty to come to the aid of drowning persons. If a lifeguard knows a swimmer is in danger and does nothing about it and the swimmer drowns, the lifeguard is legally responsible for the swimmer's death.

Mens Rea

In most situations, for an act to constitute a crime, it must be done with criminal intent, or *mens rea*. Intent, in the legal sense, can mean carrying out an act intentionally, knowingly, and willingly. However, the definition also encompasses situations in which recklessness or negligence establishes the required criminal intent.

New Jersey, who was killed in 1994. Charged with the crime was a convicted sex offender, who, unknown to the Kankas, lived across the street. On May 17, 1996, President Bill Clinton signed Megan's Law, which contained two components:

1. *Sex offender registration.* A revision of the 1994 Jacob Wetterling Act, which had required the states to register individuals convicted of sex crimes against children, also established a community notification system.
2. *Community notification.* States were compelled to make private and personal information on registered sex offenders available to the public.

Variations of Megan's Law have been adopted by all 50 states. Although civil libertarians have expressed concern that notification laws may interfere with an offender's postrelease privacy rights, recent research indicates that registered offenders find value in Megan's Law because it helps deter future abuse. When DNA collection is included in the law, it helps reduce false accusations and convictions.³⁶

Clarifying Rape Sometimes laws are changed to clarify the definition of crime and to quell public debate over the boundaries of the law. When does bad behavior cross

Criminal intent also exists if the results of an action, although originally unintended, are certain to occur. When Timothy McVeigh planted a bomb in front of the Murrah Federal Building in Oklahoma City, he did not intend to kill any particular person in the building. Yet the law would hold that McVeigh or any other person would be substantially certain that people in the building would be killed in the blast, and McVeigh therefore had the criminal intent to commit murder.

Strict Liability

Though common-law crimes require that both the *actus reus* and the *mens rea* must be present before a person can be convicted of a crime, several crimes defined by statute do not require *mens rea*. In these cases, the person accused is guilty simply by doing what the statute prohibits; intent does not enter the picture. These strict liability crimes, or public welfare offenses, include violations of health and safety regulations, traffic laws, and narcotic control laws. For example, a person stopped for speeding is guilty of breaking the traffic laws regardless of whether he or she intended to go over the speed limit or did it by accident. The underlying purpose of these laws is to protect the public; therefore, intent is not required.

Criminal Defenses

When people defend themselves against criminal charges, they must refute one or

more of the elements of the crime of which they have been accused. A number of different approaches can be taken to create this defense.

First, defendants may deny the *actus reus* by arguing that they were falsely accused and that the real culprit has yet to be identified. Second, defendants may claim that although they engaged in the criminal act of which they are accused, they lacked the *mens rea* (intent) needed to be found guilty of the crime.

If a person whose mental state is impaired commits a criminal act, it is possible for the person to excuse his or her criminal actions by claiming that he or she lacked the capacity to form sufficient intent to be held criminally responsible. Insanity, intoxication, and ignorance are types of excuse defenses. A defendant might argue that because he suffered from a mental impairment that prevented him from understanding the harmfulness of his acts, he lacked sufficient *mens rea* to be found guilty as charged.

Another type of defense is justification. Here the individual usually admits committing the criminal act but maintains that he or she should not be held criminally liable because the act was justified. Among the justification defenses are necessity, duress, self-defense, and entrapment. A battered wife who kills her mate might argue that she acted out of duress; her crime was committed to save her own life.

Persons standing trial for criminal offenses may thus defend themselves by claiming that they did not commit the act in question, that their actions were justified under the circumstances, or that their behavior can be excused by their lack of *mens rea*. If either the physical or mental elements of a crime cannot be proven, then the defendant cannot be convicted.

CRITICAL THINKING

1. Should the concept of the “guilty mind” be eliminated from the criminal law and replaced with a strict liability standard? (If you do the crime, you do the time.)
2. Some critics believe that current criminal defenses, such as the battered wife defense or the insanity defense, allow people to go free even though they committed serious criminal acts and are actually guilty as charged. Do you agree?

SOURCES: Joshua Dressler, *Cases and Materials on Criminal Law* (American Casebook Series) (Eagan, MN: West Publishing, 2003); Joel Samaha, *Criminal Law* (Belmont, CA: Wadsworth Publishing, 2001).

the line into criminality, and when does it remain merely bad behavior? An example of the former can be found in changes to the law of rape. In seven states, including California, it is now considered rape if the victim consents to sex, the sex act begins, the victim changes his/her mind during the act and tells his/her partner to stop, and the partner refuses and continues. The fact that the victim initially consented to and participated in a sexual act does not bar him/her from withdrawing that consent. However, the victim must communicate the withdrawal of consent in such a manner that the accused knew or reasonably should have known that the consent was withdrawn. Before the legal

change, such a circumstance was not considered rape but merely aggressive sex.³⁷

Controlling Technology Changing technology and the ever-increasing role of technology in people’s daily lives will require modifications of the criminal law. Such technologies as automatic teller machines and cellular phones have already spawned a new generation of criminal acts involving theft of access numbers and software piracy. For example, a modification to Virginia’s Computer Crimes Act that took effect in 2005 makes *phishing*—sending out bulk e-mail messages designed to trick consumers into revealing bank

Profiles in Crime

The Mother of All Snakeheads



AP Images, Jane Rosenberg

Cheng Chui Ping was one of the most powerful underworld figures in New York. Known as “the Mother of all Snakeheads”—meaning she was top dog in the human smuggling trade—to her friends in Chinatown she was “Sister Ping.”

Cheng was an illegal immigrant herself. Born in 1949 in the poor farming village of Shengmei in Fujian province, she left her husband and family behind and set out for the West, traveling via Hong Kong and Canada before ending up in New York in 1981.

She opened a grocery store and started other ventures that became fronts for her people-trafficking business. For more than a decade, Cheng smuggled as many as 3,000 illegal immigrants from her native China into the United States—charging upwards of \$40,000 per person. To ensure

her clients paid their smuggling fees, Sister Ping hired members of the Fuk Ching, Chinatown’s most feared gang, to transport and guard them in the United States.

In addition to running her own operation, Sister Ping helped other smugglers by financing large vessels designed for human cargo. She also ran a money transmitting business out of her Chinatown variety store. She used this business to collect smuggling fees from family members of her own “customers,” and also collected ransom money on behalf of other alien smugglers.

Conditions aboard the smuggling vessels were often inhumane. The voyages were dangerous, and on at least one occasion a boat capsized while offloading people to a larger vessel, and 14 of her “customers” drowned. The *Golden Venture*, a smuggling ship Sister Ping helped finance for others, was intentionally grounded off the coast of Rockaway, Queens, when the offloading vessel failed to meet it in the open sea. Many of the passengers could not swim, and 10 people drowned.

Cheng Chui Ping was indicted when members of the Fuk Ching gang cooperated with federal agents. After her indictment, Cheng fled to China, where she continued to run a smuggling operation. Hong Kong

police arrested her at the airport. Cheng fought extradition but was eventually delivered to the United States. She was convicted in New York less than two years later on multiple counts, including money laundering, conspiracy to commit alien smuggling, and other smuggling-related offenses, and was sentenced to 35 years in prison.

The activities of Sister Ping illustrate how the law must evolve to confront newly emerging social problems such as illegal immigration. Other areas include cyber-crime, drug importation, and terrorism. Unfortunately, the law is sometimes slow to change, and change comes only after conditions have reached a crisis. How might laws be changed to reduce illegal immigration? Should people caught entering the country illegally be charged with a felony and imprisoned?

SOURCES: FBI News release, “Sister Ping Sentenced to 35 Years in Prison for Alien Smuggling, Hostage Taking, Money Laundering and Ransom Proceeds Conspiracy,” March 16, 2006, <http://www.justice.gov/usao/nys/pressreleases/March06/sisterpingsentencingpr.pdf> (accessed October 31, 2010); BBC news, “Cheng Chui Ping: ‘Mother of Snakeheads,’” <http://news.bbc.co.uk/2/hi/americas/4816354.stm> (accessed October 31, 2010).

account passwords, Social Security numbers, and other personal information—a felony. Those convicted of selling the data or using the data to commit another crime, such as identity theft, now face twice the prison time.

Protecting the Environment In response to the concerns of environmentalists, the federal government has passed numerous acts designed to protect the nation’s well-being. The Environmental Protection Agency has successfully prosecuted significant violations of these and other new laws, including data fraud cases (e.g., private laboratories submitting false environmental data to state and federal environmental agencies); indiscriminate hazardous waste dumping that resulted in serious injuries and death; industrywide ocean dumping by cruise ships; oil spills that caused significant damage to waterways, wetlands, and beaches; and illegal handling of hazardous substances such as pesticides

and asbestos that exposed children, the poor, and other especially vulnerable groups to potentially serious illness.³⁸

Legalizing Marijuana A number of states are now exploring the legalization of marijuana for medical purposes. For example, New Jersey Senate Bill 119, signed into law on January 18, 2010, is typical of changes in the law. The bill protects “patients who use marijuana to alleviate suffering from debilitating medical conditions, as well as their physicians, primary caregivers, and those who are authorized to produce marijuana for medical purposes” from “arrest, prosecution, property forfeiture, and criminal and other penalties.” It also provides for the creation of alternative treatment centers, “at least two each in the northern, central, and southern regions of the state. The first two centers issued a permit in each region shall be nonprofit entities, and centers subsequently issued permits may be nonprofit or for-profit

entities.” The bill allows marijuana to be prescribed for a variety of illnesses ranging from severe chronic pain, nausea, and vomiting to terminal illnesses such as cancer. Physicians determine how much marijuana a patient needs and give written instructions to be presented to an alternative treatment center. The maximum amount for a 30-day period is two ounces.³⁹ According to the Drug Policy Alliance, Alaska, California, Colorado, Hawaii, Maine, Michigan, Montana, Nevada, New Mexico, Oregon, Rhode Island, Vermont, and Washington have created laws that effectively remove state-level criminal penalties for growing and/or possessing medical marijuana. Another ten states, plus the District of Columbia, have symbolic medical marijuana laws (laws that support medical marijuana but do not provide patients with legal protection under state law).⁴⁰

While providing medical marijuana has strong public support, the federal government still criminalizes any use of marijuana, and federal agents can arrest users even if they have prescriptions from doctors in states where medical marijuana is legal. The Supreme Court ruled in 2005 in *Gonzales v. Raich* that the federal government can prosecute medical marijuana patients, even in states with compassionate use laws.⁴¹ The Court ruled that under the Commerce Clause of the United States Constitution, which allows the United States Congress “To regulate Commerce . . . among the several States,” Congress may ban the use of cannabis even where states approve its use for medicinal purposes. The reasoning: because of high demand, marijuana grown for medical reasons would find its way into the hands of ordinary drug users. So while the law may change on a local or state level, federal rules take precedent.

Responding to Terrorism The criminal law has also undergone extensive change in both substance and procedure in the aftermath of the September 11, 2001, terrorist attacks. These acts will be discussed further in Chapter 18.

The future direction of U.S. criminal law remains unclear. Certain actions, such as crimes by corporations and political corruption, will be labeled as criminal and given more attention. Other offenses, such as recreational drug use, may be reduced in importance or removed entirely from the criminal law system. The globalization of crime will present even more challenges, as described in the Profiles in Crime feature “The Mother of All Snakeheads.”

ETHICAL ISSUES IN CRIMINOLOGY

A critical issue facing students of criminology involves recognizing the field’s political and social consequences. All too often, criminologists forget the social responsibility they

bear as experts in the area of crime and justice. When government agencies request their views of issues, their pronouncements and opinions become the basis for sweeping social policy. The lives of millions of people can be influenced by criminological research data.

Debates over gun control, capital punishment, and mandatory sentences are ongoing and contentious. Some criminologists have successfully argued for social service, treatment, and rehabilitation programs to reduce the crime rate, but others consider them a waste of time, suggesting instead that a massive prison construction program coupled with tough criminal sentences can bring the crime rate down. By accepting their roles as experts on law-violating behavior, criminologists place themselves in a position of power; the potential consequences of their actions are enormous. Therefore, they must be aware of the ethics of their profession and be prepared to defend their work in the light of public scrutiny. Major ethical issues include these:

- What to study?
- Whom to study?
- How to study?

What to Study?

Under ideal circumstances, when criminologists choose a subject for study, they are guided by their own scholarly interests, pressing social needs, the availability of accurate data, and other similar concerns. Nonetheless, in recent years, a great influx of government and institutional funding has influenced the direction of criminological inquiry. Major sources of monetary support include the Justice Department’s National Institute of Justice, the National Science Foundation, and the National Institute of Mental Health. Private foundations, such as the Edna McConnell Clark Foundation, have also played an important role in supporting criminological research.

Though the availability of research money has spurred criminological inquiry, it has also influenced the direction research has taken. State and federal governments provide a significant percentage of available research funds, and they may also dictate the areas that can be studied. In recent years, for example, the federal government has spent millions of dollars funding long-term cohort studies of criminal careers. Consequently, academic research has recently focused on criminal careers. Other areas of inquiry may be ignored because there is simply not enough funding to pay for or sponsor the research.

A potential conflict of interest may arise when the institution funding research is itself one of the principal subjects of the research project. Governments may be reluctant to fund research on fraud and abuse of power by government officials. They may also exert a not-so-subtle influence on the criminologists seeking research funding: if criminologists are too critical of the government’s efforts to reduce or counteract crime, perhaps they will be barred from

receiving further financial help. This situation is even more acute when we consider that criminologists typically work for universities or public agencies and are under pressure to bring in a steady flow of research funds or to maintain the continued viability of their agency. Even when criminologists maintain discretion of choice, the direction of their efforts may not be truly objective. The objectivity of research may be questioned if studies are funded by organizations that have a vested interest in the outcome of the research. For example, a study on the effectiveness of the defensive use of handguns to stop crime may be tainted if the funding for the project comes from a gun manufacturer whose sales may be affected by the research findings. Efforts to show that private prisons are more effective than state correctional facilities might be tainted if the researchers received a research grant from a corporation that maintains private prisons.

Whom to Study?

A second major ethical issue in criminology concerns who will be the subject of inquiries and study. Too often, criminologists focus their attention on the poor and minorities while ignoring the middle-class criminal who may be committing white-collar crime, organized crime, or government crime. Critics have charged that by “unmasking” the poor and desperate, criminologists have justified any harsh measures taken against them. For example, a few social scientists have suggested that criminals have lower intelligence quotients than the average citizen, and that because minority group members have lower than average IQ scores, their crime rates are high.⁴² This was the conclusion reached in *The Bell Curve*, a popular though highly controversial book written by Richard Herrnstein and Charles Murray.⁴³ Although such research is often methodologically unsound, it brings to light the tendency of criminologists to focus on

one element of the community while ignoring others. The question that remains is whether it is ethical for criminologists to publish biased or subjective research findings, paving the way for injustice.

How to Study?

Ethics are once again questioned in cases where subjects are misled about the purpose of the research. When white and African American individuals are asked to participate in a survey of their behavior or an IQ test, they are rarely told in advance that the data they provide may later be used to prove the existence of significant racial differences in their self-reported crime rates. Should subjects be told about the true purpose of a survey? Would such disclosures make meaningful research impossible? How far should criminologists go when collecting data? Is it ever permissible to deceive subjects to collect data? Criminologists must take extreme care when they select subjects for their research studies to ensure that they are selected in an unbiased and random manner.⁴⁴

When criminological research efforts involve experimentation and treatment, care must be taken to protect those subjects who have been chosen for experimental and control groups. For example, it may be unethical to provide a special treatment program for one group while depriving others of the same opportunity. Conversely, criminologists must be careful to protect subjects from experiments that may actually cause them harm. An examination of the highly publicized Scared Straight program, which brought youngsters into contact with hard-core prison inmates who gave them graphic insights into prison life (to scare them out of a life of crime), discovered that the young subjects may have been harmed by their experience. Rather than being frightened into conformity, subjects actually increased their criminal behavior.⁴⁵

SUMMARY

1. Understand what is meant by the “field of criminology”

- Criminology is the scientific approach to the study of criminal behavior and society’s reaction to law violations and violators. It is an academic discipline that uses the scientific method to study the nature, extent, cause, and control of criminal behavior. Criminology is an interdisciplinary science. Criminologists hold degrees in a variety of fields, most commonly

sociology, but also criminal justice, political science, psychology, economics, engineering, and the natural sciences. Criminology is a fascinating field, encompassing a wide variety of topics that have both practical application and theoretical importance.

2. Be familiar with the various elements of the criminological enterprise

- The various subareas included within the scholarly discipline

of criminology, taken as a whole, define the field of study. The subarea of criminal statistics/crime measurement involves calculating the amount of, and trends in, criminal activity. Sociology of law/law and society/socio-legal studies is a subarea of criminology concerned with the role that social forces play in shaping criminal law and the role of criminal law in shaping society. Criminologists also explore the causes of

crime. Another subarea of criminology involves research on specific criminal types and patterns: violent crime, theft crime, public order crime, organized crime, and so on. The study of penology, correction, and sentencing involves the treatment of known criminal offenders. Criminologists recognize that the victim plays a critical role in the criminal process and that the victim's behavior is often a key determinant of crime.

3. Know the difference between crime and deviance

- Criminologists devote themselves to measuring, understanding, and controlling crime and deviance. Deviance includes a broad spectrum of behaviors that differ from the norm, ranging from the most socially harmful to the relatively inoffensive. Criminologists are often concerned with the concept of deviance and its relationship to criminality.

4. Discuss the three different views of crime

- According to the consensus view, crimes are behaviors that all elements of society consider repugnant. This view holds that the majority of citizens in a society share common values and agree on what behaviors should be defined as criminal. The conflict view depicts criminal behavior as being defined by those in power to protect and advance their own self-interest. According to the interactionist view, those with social power are able to impose their values on society as a whole, and these values then define criminal behavior.

5. Know what constitutes the different categories of law

- Substantive criminal law involves such issues as the mental

and physical elements of crime, crime categories, and criminal defenses. Procedural criminal law sets out the basic rules of practice in the criminal justice system. It includes the rules of evidence, the law of arrest, the law of search and seizure, questions of appeal, jury selection, and the right to counsel. The civil law governs relations between private parties, including both individuals and organizations (such as business enterprises and/or corporations), and is used to resolve, control, and shape such personal interactions as contracts, wills and trusts, property ownership, personal disputes (torts), and commerce. Administrative laws are enforced by governmental agencies such as the IRS or EPA.

6. Discuss the different purposes of criminal law

- The criminal law serves several important purposes. It represents public opinion and moral values. It enforces social controls. It deters criminal behavior and wrongdoing. It punishes transgressors. It creates equity and abrogates the need for private retribution.

7. Trace the development of criminal law

- The criminal law used in U.S. jurisdictions traces its origin to the English system. At first the law of precedent was used to decide conflicts on a case-by-case basis during the middle ages. Judges began to use these written decisions as a basis for their decision making, and eventually a fixed body of legal rules and principles was established. If a new rule was successfully applied in a number of different cases, it would become a precedent. These precedents would then be commonly

applied in all similar cases—hence the term *common law*. In the U.S. legal system, lawmakers have codified common-law crimes into state and federal penal codes.

8. Describe the difference between a felony and a misdemeanor

- A felony is a serious offense that carries a penalty of imprisonment, usually for one year or more, and may entail loss of political rights. A misdemeanor is a minor crime usually punished by a short jail term and/or a fine.

9. Recognize the relationship between the criminal law and the U.S. Constitution

- All criminal law in the United States must conform to the rules and dictates of the U.S. Constitution. Criminal laws have been interpreted as violating constitutional principles if they are too vague or too broad to give clear meaning of their intent. The Constitution also prohibits laws that make a person's status a crime. The Constitution limits laws that are overly cruel or capricious.

10. Be familiar with the ethical issues in criminology

- Ethical issues arise when information-gathering methods appear biased or exclusionary. These issues may cause serious consequences because research findings can significantly affect individuals and groups. Criminologists must be concerned about the topics they study. Another ethical issue in criminology revolves around the selection of research subjects. A third area of concern involves the methods used in conducting research.

KEY TERMS

criminology (4)
criminologists (4)
criminal justice (4)
scientific method (5)
justice (5)
criminological enterprise (6)
crime typology (9)

consensus view (12)
social harm (12)
deviant behavior (12)
conflict view (13)
interactionist view (14)
moral entrepreneurs (14)
common law (15)

mala in se (15)
mala prohibita (15)
substantive criminal law (16)
procedural criminal law (16)
civil law (16)
public law (16)
stalking statutes (19)

CRITICAL THINKING QUESTIONS

1. Beccaria argued that the threat of punishment controls crime. Are there other forms of social control? Aside from the threat of legal punishments, what else controls your own behavior?
2. What research method would you employ if you wanted to study drug and alcohol abuse at your own school?
3. Would it be ethical for a criminologist to observe a teenage gang by “hanging” with them, drinking, and watching as they steal cars? Should he or she report that behavior to the police?
4. Can you identify behaviors that are deviant but not criminal? What about crimes that are illegal but not deviant?
5. Do you agree that some of the most damaging acts in society are not punished as crimes? If so, what are they?
6. If you could change the criminal law, what behaviors would you legalize? What would you criminalize? What might be the consequences of your actions—in other words, are there any hidden drawbacks?

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AP Images/The Athens Banner-Herald/Athens, David Manning

ON On April 25, 2009, George Zinkhan, 57, killed his wife, Marie Bruce, and two other people, Thomas Tanner and Ben Teague, as they exited a reunion picnic of the Town and Gown Players theater group in Athens, Georgia. Zinkhan then fled the scene and eluded a police manhunt until his body was located in a rural area two weeks later. It seems that Zinkhan had dug a shallow grave, covered himself with twigs and leaves, and then committed suicide by shooting himself in the head. At first the shootings seemed inexplicable, but news reports later indicated that George and Marie were having marital problems and that George suspected Tanner, a Clemson University economics professor, of being romantically involved with Marie; the third victim, Ben Teague, was simply “at the wrong place, at the wrong time.”